

APPEAL NO. 031020
FILED JUNE 12, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 12, 2003. The hearing officer determined that respondent 2 (claimant herein) did not sustain a compensable injury on _____, but that the appellant (carrier 1 herein) waived its right to contest compensability of the claimant's _____, injury. The hearing officer also decided that the claimant did not have disability from the _____, injury because the claimant's inability to obtain and retain employment beginning on July 10, 2002, was a result of the claimant's termination for cause on or about _____, and not caused by an injury on _____. Finally, the hearing officer found that the claimant's compensable injury of November 18, 1998, which was covered by respondent 1 (carrier 2 herein), did not extend to include lumbar sacral nerve root irritation and lumbar sprain/strain after _____. Carrier 1 files a request for review arguing that the hearing officer erred in concluding that it waived the compensability of the claimant's _____, injury. There is no response from the claimant or from carrier 2 to carrier 1's request for review in the appeal file. No party appeals any other of the hearing officer's determinations.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

In evidence is carrier 1's Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) in which carrier 1 disputed that the claimant suffered an injury in the course and scope of employment. The TWCC-21, dated August 19, 2002, states on its face that carrier 1's first written notice of injury was received on "8-7-02" and is also stamped "SENT AUG 19 2002." We find that there is evidence in the record showing that carrier 1 failed to dispute the claimant's injury within seven days of receiving written notice of injury.

Section 409.021 provides that the insurance carrier shall, not later than the seventh day after the date on which the insurance carrier receives written notice of an injury, begin the payment of benefits as required by the 1989 Act or notify the Texas Workers' Compensation Commission and the injured employee in writing of its refusal to pay. The Supreme Court of Texas in Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002) (hereinafter Downs) held that the failure of a carrier to comply with the pay or dispute provision resulted in the carrier waiving its right to contest compensability. In Texas Workers' Compensation Commission Appeal No. 021944-s, decided September 11, 2002, the Appeals Panel held that the Downs decision applied to cases where carrier waiver was in issue and which came to the Appeals Panel after August 30, 2002, the date the Downs decision became final.

The carrier argues that these provisions do not apply in the present case because of the holding in Continental Casualty Company v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet. h.) (hereinafter Williamson). In Williamson, the Tyler Court of Appeals held that if a hearing officer determines that there is no injury, and that finding is not against the great weight and preponderance of the evidence, the carrier's failure to contest compensability cannot create an injury as a matter of law. We agree with that proposition; however, we find it is not applicable in this case. We have previously recognized that Williamson is limited to situations where there is a determination that the claimant did not have an injury as defined in Section 401.011(26)¹, as opposed to cases such as this, where there is an injury which was determined by the hearing officer not to be causally related to the employment. Texas Workers' Compensation Commission Appeal No. 020941, decided June 6, 2002; Texas Workers' Compensation Commission Appeal No. 022450, decided November 12, 2002. To interpret Williamson in the way carrier 1 argues would in essence mean that waiver would only apply to cases in which the claimant would have won absent waiver, which would in effect render Section 409.021 and the Downs decision meaningless. In a long and unbroken line of cases, the Appeals Panel has rejected such an interpretation. We continue to do so.

¹ Which in relevant part defines injury as, "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm."

The decision and order of the hearing officer are affirmed.

The true corporate name of insurance carrier 1 is **FEDERAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**PARKER W. RUSH
1445 ROSS AVENUE, SUITE 4200
DALLAS, TEXAS 75202.**

The true corporate name of insurance carrier 2 is **ROYAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge